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INTERGOVERNMENTAL GROUP TO MONITOR
THE SUPPLY AND SHIPPING OF OIL AND
PETROLEUM PRODUCTS TO SOUTH AFRICA

STATEMENT BY THE CHAIRMAN OF THE INTERGOVERNMENTAL GROUP, MR. ANTHONY B. NYAKYI (UNITED REPUBLIC OF TANZANIA), AT THE 8TH MEETING, ON 12 JUNE 1990*

1. The interim report of the Intergovernmental Group which is now to be submitted to the General Assembly, 1/ covers part of the work of the Group in 1989, information on which was not included in the annual report to the Assembly at its forty-fourth session. 2/ It was deferred, as it will be recalled, for six months in order to allow Governments more time to investigate cases referred to them and to give the Group an opportunity to study the replies and form an opinion on them. That decision to postpone the presentation of the Group's findings was justified. Some of the most important and productive responses were submitted only in the last two to three months.

2. The Intergovernmental Group's prudence in deciding not to jump to conclusions or to rush its report on the matter also reflected what some would see as the underlying dilemma faced by the Group, but which I would prefer to see as the underlying challenge to the Group's ingenuity and diplomatic skills. That basic challenge is that, while the Group's mandate is clear and simple, the methods and procedures to be employed in its pursuit were not explicitly laid down but were left to the Group itself to determine. Nor were there any completely applicable precedents, since it was the first time the General Assembly had designated an intergovernmental group to monitor and supervise the implementation of non-mandatory sanctions. The procedures and activities of Security Council bodies dealing with the mandatory sanctions against the former Rhodesian régime and South Africa in regard to the arms embargo offered some precedent.

3. Nevertheless, there was still much that the Intergovernmental Group itself had to develop and adapt as it went along, and I believe that it has been very

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successful and resourceful in that regard in the few years of its existence. The scope and extent of the work has been impressive and all the more so when one considers the minimal financial implications. Perhaps the Group's success in finding new and creative approaches to its basic mandate has resulted from the spirit of modesty and collegiality with which difficult questions have been discussed. None of the Group's members has laid any claim to being the sole depository of the requisite wisdom or experience. Doubts and uncertainties, as well as divergent views deriving from divergent legal and governmental traditions, have all been discussed with great openness. This has enabled the emergence of an operational consensus for the work which I would now like to explain briefly.

4. Previously, the Intergovernmental Group had concentrated almost exclusively on alleged violations of the oil embargo, more specifically on alleged cases of delivery of oil or petroleum products to South Africa. The monitoring of port calls of ships with petroleum-bearing capability was accorded little or no attention because, while delivery of oil or petroleum products constitutes a clear violation of the oil embargo, the mere porting of a ship of petroleum-bearing capability in South Africa is not, in itself, a violation.

5. The original approach of the Intergovernmental Group to limit itself to the passive work of sifting evidence for or against allegations of oil deliveries in individual cases, taken in isolation one from another and divorced from any wider global context, could not be considered as the sole and ultimate method of coming to grips with the problem. In addition, that approach was never explicitly spelt out in the mandate. Furthermore, it would be more realistic to consider that approach as a first step towards tackling the question and a foundation to be built upon. It was, in other words, the most obvious starting point. In the long run, there is little merit in having the Group play the role of a tribunal that hears and pronounces on cases of alleged violations. A much more fruitful approach is to advance beyond the purely negative role and to concentrate on a more positive role of the trouble-shooting consultant who, while trying to identify the individual violators, is also considering the whole problem.

6. In this new role, the Intergovernmental Group would be in a position to point to global structural conditions that permit or facilitate the violation of the oil embargo in general, and to make meaningful observations thereon from which practical conclusions or recommendations can be derived. This will certainly assist Governments wishing to contribute to the enforcement of the oil embargo. This new approach requires directing the attention of the Group to something more comprehensive and global in addition to individual cases of alleged violations. In other words, the work of the Group on allegations of isolated violations of the oil embargo should be complemented with an overall approach.

7. The Intergovernmental Group took very seriously objections raised to the monitoring of port calls on the grounds that it exceeded the basic mandate, because ships call at ports for reasons other than the discharge of cargoes and because the cargoes involved could be something other than petroleum. This objection would be especially relevant in the case of the combination carrier, which is capable of ferrying oil in one direction and iron ore or coal in the other direction.

8. It is clear that the Intergovernmental Group can deal only with cases of oil deliveries to South Africa, which means it has no mandate over exports of any kind from South Africa, nor over ships that go into a South African port for emergency reasons, or to bunker or to shift crews. Secondly, the cargo involved must be some form of petroleum. This could include a number of products other than crude oil, such as liquid petroleum gas, petro-chemicals or methanol, but it would clearly exclude such items as phosphoric acid, vegetable oils, coal or iron ore. The Group has consistently operated within the narrow confines of this framework. So far it has requested information from Governments exclusively on inbound voyages to South Africa, and has not involved itself in any voyages that commenced there. It has limited its interest to ships that it believed had the capacity to transport some form of petroleum. It has not requested information from any Government on the activities of dry cargo ships, and in a few cases, where flag-State Governments reported that certain ships were not certified to carry oil, the Group removed the ships from further consideration.

9. The Intergovernmental Group has taken note of the fact that ships call at South African ports for emergency reasons and not only to deliver oil or petroleum products. However, in order to ensure compliance with its basic mandate, the Group should ascertain whether a ship with petroleum-bearing capacity actually delivered a prohibited cargo to South Africa. It can only do so by querying the circumstances of the voyage. The Group is well aware of the possibility that a ship may call at a South African port for some other reason, but that possibility alone is not sufficient to assume that it did not deliver a prohibited cargo.

10. The results of the survey of port calls reveals the possibility, indeed probability, of the existence of a serious loophole in the frequent porting of ships with petroleum-bearing capability at South African ports. To close it, the co-operation of the countries most directly concerned, that is, those where the ships were registered, is vital. Unfortunately the failure of most of them to avail themselves of the ample opportunities provided to offer legitimate explanations for the port calls has seriously hampered the efforts of the Group to plug the loophole. This now brings us to the second difficult issue, namely, what the Group should, or may, do about the loophole.

11. A question might be raised whether the Intergovernmental Group's mandate precludes it from making any direct recommendations to Governments to the effect that they should prevent, or even discourage, ships flying their flag from calling at South African ports. To be sure, one Government, that of Sweden, did make such a recommendation to its shipping companies in 1985, with the result that its ships practically never call at South African ports. Regrettably, not all Governments have the political will to do this. Governments that are genuinely committed to the enforcement of the oil embargo cannot ignore investigating circumstances that might give rise to the possibility of its violation. The Group has identified the problem. It is now for Member States to take appropriate action. What such action could be has also been suggested by the Group in paragraph 15 of the interim report, 1/ which I would like to commend to all Member States for their serious consideration. The measure taken by Sweden in 1985 was a recommendation or an appeal, not a binding prohibition. And yet it has been largely effective. The problem is not insoluble. If Sweden can do it, all Governments can do it. I am

not aware of any law that forbids Governments from making an appeal or a recommendation.

12. Let me further stress that the Intergovernmental Group is mindful of the exigencies of the merchant marine services and in no way wishes to inconvenience mariners or, even less, forbid emergency port calls. In fact, in only one case did a Government state that a port call was of an emergency nature. In the majority of cases, the Group removed from further consideration those ships said to have been proceeding to South Africa in ballast to pick up a cargo there. In other cases ships were carrying a cargo that is not covered by the oil embargo. But the Group cannot be expected to act on the assumption that some 200 to 250 emergencies requiring a port call in South Africa occur every year, particularly since ships involved in the unclarified port calls are not randomly distributed across the spectrum of seafaring nations but are heavily concentrated in certain national registries. In addition, the voyage itineraries seem to follow certain patterns. The survey also brought to light the fact that a single company is inordinately active in stopping at South African ports.

13. In conclusion, let me cite two general facts that emerge from this survey of port calls, as well as from more recent research done on the general issue of South African oil procurement by independent bodies. One is that we are not dealing with a legitimate non-embargoed purchaser of oil that simply goes to the nearest market and there openly strikes the best deal in broad daylight. South Africa, being barred from this normal procedure, must employ circumvention and subterfuge. In particular, there is reason to believe that it is obtaining some of its oil not from oil-producers but from intermediary handlers and even from important oil-consumers. A second and inescapable conclusion is that a major responsibility for what goes on lies with the State where the ship is registered. Other States involved in the complex chain of activities that bring petroleum from the well or the refinery to South Africa cannot be excused from any co-responsibility even though their control over that complex chain of activities is limited to a link or two. The law of the flag State is applicable in part to all links in the chain, and when the ship is on the high seas it is the only law applicable. How, for example, can deliveries to South Africa, where the oil has been transloaded on the high seas, be effectively prevented by the States that produced and sold the oil if the flag State does not co-operate?

14. In this statement I have highlighted the major features in the interim report. 1/ In commending the report to Member States, I hope its observations and recommendations will be accorded necessary attention and action so that, all together, we may have, at this critical juncture in South Africa, a greater impact in facilitating and promoting the process of negotiation in South Africa as called for in the historic Declaration on Apartheid and its Destructive Consequences in Southern Africa, which was adopted by consensus on 14 December 1989 at the sixteenth special session of the General Assembly. 3/ The Declaration commits all Member States, individually and collectively, to abide by its provisions and especially to refrain from relaxing any pressure until there is evidence of profound and irreversible change in South Africa.

15. The oil embargo to South Africa is potentially one of the most effective pressures at the disposal of the international community. It must be used

effectively to help resolve the conflict in South Africa and to serve the course of freedom, peace and progress in the country and the region as a whole.

Notes

1/ To be issued as Official Records of the General Assembly, Forty-fourth Session, Supplement No. 44 A (A/44/44/Add.1).

2/ Official Records of the General Assembly, Forty-fourth Session, Supplement No. 44 (A/44/44).

3/ Resolution S-16/1.